

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 889 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

NEW INDIA ASSURANCE CO.LTD.

Versus

KHUNT SAKERBEN JIVABHAI

Appearance:

MR RAJNI H MEHTA for Petitioner
MR PM THAKKAR for Respondent No. 1
SERVED for Respondent No. 6
MR JD AJMERA for Respondent No. 8

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 19/02/97

ORAL JUDGEMENT

Appellant, The New India Assurance Co. Ltd. by way of filing this appeal under S.110D of the Motor Vehicles Act, 1939 (for short 'the Act') has challenged the judgment and award dated 13.2.1980, passed by the Motor Accident Claims Tribunal-I, Rajkot, in Claim Case No. 46 of 1979, whereby the Tribunal awarded to

respondents no.1 to 5, who are the original applicants, compensation of Rs.40,000/- togetherwith costs and interest at the rate of 6% per annum from the date of the application till realisation.

2. The applicants who are the widow and minor children of Jivabhai Jerambhai (since deceased) filed application before the Motor Accident Claims Tribunal, Rajkot, claiming compensation of Rs.60,000/-. The case of the applicants is that on the fateful day, i.e. on 18.4.1978 in the early morning hours at about 3.0 a.m. the deceased was travelling in truck bearing No.GTS 6220 on Rajkot Bhavnagar Road. The said truck met with an accident as a result of which the deceased succumbed to the injuries sustained by him in the accident. The claim petition was contested by the driver as well as owner of the truck and the insurance company. The Tribunal after appreciating the oral as well as documentary evidence came to the conclusion that the truck driver was rash and negligent in driving truck bearing No.GTS 6220. The deceased died due to rash and negligent driving of the truck by the driver and therefore, the owner as well as the insurance company were liable to pay compensation to the heirs of the deceased. The Tribunal assessed the monthly income of the deceased at Rs.250/- and after deducting the amount which would have been spent by the deceased for himself, loss of dependency benefit was assessed at Rs.200/- p.m., i.e. Rs.2,400/- per annum. The Tribunal applied multiplier of 15, and awarded total sum of Rs.36,000/- under the head of loss of dependency benefit to the heirs of the deceased. Under the conventional rate, an amount of Rs.3,000/- was awarded. The Tribunal also awarded to the heirs Rs.1,000/- for funeral expenses and other sundry items. Thus the Tribunal awarded a total compensation of Rs.40,000/- to the claimants for the untimely death of the deceased.

3. Learned Counsel for the appellant-insurance company has strenuously urged that the deceased was travelling in the truck as a passenger alongwith goods. He further urged that as the truck was a Goods Carriage vehicle the insurance company is not liable to pay the compensation as per the provisions of the Motor Vehicles Act. The submission of the learned Counsel for the insurance company is devoid of any merit. In NEW INDIA ASSURANCE CO.LTD. vs. KAMLABEN WD./O. SULTANSINH HAKUMSINH JADAV & ORS., 1993(1) GLR, 779, the Full Bench of this High Court has held that unless the permit of the vehicle in question is produced on the record of the case, it cannot be held that on the date of the accident, the insured vehicle was expressly or implicitly not

covered by a permit to carry any passenger for hire or reward. Admittedly in this case, no permit has been produced on the record of the case by the insurance company. Therefore, in absence of the permit, it cannot be held that the truck in question was expressly or implicitly barred from carrying any passenger for hire or reward. Therefore, the insurance company cannot escape the liability to answer the award. The Tribunal has awarded just compensation to the heirs of the deceased who died in the vehicular accident on 18.4.1978. No other point is urged on behalf of the appellant insurance company. Hence I do not find any ground to interfere with the impugned judgment and award of the Tribunal.

4. As a result of the foregoing discussion, the appeal fails and is dismissed accordingly, with costs.

(abraham)